

SUPERFUND STATE CONTRACT
BETWEEN
THE STATE OF NEW YORK
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
FOR REMEDIAL ACTIVITIES RELATED TO THE
EIGHTEEN MILE CREEK SUPERFUND SITE
IN THE STATE OF NEW YORK

A. Authority

This Superfund State Contract (the "Contract") is entered into pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9604, the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Part 300, hereinafter referred to as the "NCP"), 40 C.F.R. Part 35, Subpart O (Cooperative Agreements and Superfund State Contracts for Superfund Response Actions), and 40 C.F.R. Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

B. Purpose

This is an agreement between the United States Environmental Protection Agency ("USEPA") and the State of New York (the "State") (hereinafter referred to individually as "Party" or collectively as "Parties") to conduct remedial actions at the Eighteen Mile Creek Superfund site (the "Site") located in Niagara County, New York. Attached hereto and incorporated herein as Appendix A is a description of the Site. This Contract covers tasks and activities described in the Statement of Work ("SOW") attached hereto and incorporated herein as Appendix B. This Contract may be amended if the Parties agree to

amend the remedial action or undertake additional remedial actions beyond those actions described in the SOW.

C. Parties' Representatives

1. Attached hereto as Appendix C is a letter from the State Attorney General which certifies that the agency entering into this Contract on behalf of the State has legal authority to do so and to fulfill its terms.
2. USEPA has designated Doug Garbarini, Chief, New York Remediation Branch, USEPA, Region II, 290 Broadway, New York, New York, 10007-1866, (212) 637-4288, to serve as USEPA Project Officer for this Contract. USEPA has designated Thomas Taccone as the Remedial Project Manager ("RPM") for this Contract.
3. The State has designated Robert Schick, Director, Division of Environmental Remediation, New York State Department of Environmental Conservation ("NYSDEC"), 625 Broadway, Albany, New York 12233, (518) 402-9706, to serve as the State Project Officer for this Contract. The State has designated Gregory Sutton as the State Project Manager ("SPM") for this Contract.

D. General Provisions

1. This contract is between USEPA and the State.

2. In addition to adhering to the requirements specified in CERCLA and the NCP, the Parties intend to follow applicable program requirements set forth in USEPA policy and guidance identified in the Administrative Record.
3. USEPA or its agent shall employ contractors to do the work described in the SOW and shall make all payments to its contractors for that work. The USEPA, at its own cost and expense, shall furnish the necessary personnel, materials, services, and facilities to perform its responsibilities to administer this Contract. If construction management is performed by the U.S. Army Corps of Engineers, the costs associated with personnel, materials, services, and facilities necessary to perform its services shall be considered part of the respective Task and shared by the State in accordance with this Contract.
4. USEPA shall seek State input on any key decision points relating to the implementation of work set forth in the SOW.
5. The RPM, after consultation with the SPM, may make project changes that do not substantially alter the scope of the response actions at the Site or the cost of the remedial action.
6. The USEPA Project Officer shall report major modifications to schedules or activities to the State Project Officer.

7. USEPA shall provide regular technical and financial status reports to the State. The USEPA Project Officer and the State Project Officer shall negotiate a schedule for submittal of the reports.
8. USEPA is responsible for ensuring that a Site health and safety plan will be prepared prior to the initiation of on-Site activities, and that it will be implemented during the project.
9. USEPA is responsible for the completion of those Site activities described in the SOW (Appendix B).
10. USEPA shall submit all final plans, reports, and modifications to the SOW to the State for review prior to issuance or implementation.

E. Financial Responsibilities of the Parties and Payments

1. The State shall provide USEPA with the money to pay for 10% of the cost of the work described in Task I, as identified in the SOW. The present estimate of the cost to implement Task I is \$1,700,000. This estimate is derived from the Record of Decision issued on September 30, 2013 by the EPA with respect to the Site. The payment amounts set forth in Paragraph E.2, below, are based on this estimate. The State understands that the actual final cost of Task I may differ from the aforesaid estimate; the State agrees to pay USEPA 10% of the total amount paid by USEPA for Task I, whether the amount paid by USEPA proves to be greater or less than the estimate set

forth above. State overpayments or underpayments will be addressed in accordance with Paragraph E.6., below. In addition, if, based on actual Task I costs paid, USEPA at any time revises the cost estimate for Task I, the payment amounts set forth in this Paragraph may be changed by an Amendment to this Contract.

2. The State shall make the following payments to USEPA for Task I in accordance with the following schedule:

<u>DATE</u>	<u>PAYMENT</u>
USEPA will submit a Bill for Collection following the Task I resident relocation and mobilization for the house and building demolition activities. Payment will be due 30 days after the submission of the Bill for Collection.	\$85,000 (50% of the estimated cost of the State's 10% share of the Task I Contract amount)
USEPA will submit a Bill for Collection following house demolition activity. Payment will be due 30 days after the submission of the Bill for Collection.	\$ 68,000 (40% of the estimated cost of the State's 10% share of the Task I Contract amount)
USEPA will submit a Bill for Collection following the completion of the final inspection associated with Task I. Payment will be due 30 days after the submission of the Bill for Collection.	Remainder of actual State 10% cost share for the actual Task I Contract amount

3. The State shall provide USEPA with the money to pay for 10% of the cost of the work described in Task II, as identified in the SOW. The present estimate of the cost to implement Task II is \$2,243,000. This estimate is derived from the Record of Decision issued by the EPA on September 30, 2013 with respect to the Site. The payment amounts set forth in Paragraph E.4, below, are based on this estimate. The

State understands that the actual final cost of Task II may differ from the aforesaid estimate; the State agrees to pay USEPA 10% of the total amount paid by USEPA for Task II, whether the amount paid by USEPA proves to be greater or less than the estimate set forth above. State overpayments or underpayments will be addressed in accordance with Paragraph E.6., below. In addition, if, based on actual Task II costs paid, USEPA at any time revises the cost estimate for Task II, the payment amounts set forth in this Paragraph may be changed by an Amendment to this Contract.

4. The State shall make the following payments to USEPA for Task II in accordance with the following schedule:

<u>DATE</u>	<u>PAYMENT</u>
USEPA will submit a Bill for Collection following mobilization for Task II soil excavation activities. Payment will be due 30 days after the submission of the Bill for Collection.	\$112,150 (50% of the estimated cost of the State's 10% share of the Task II Contract amount)
USEPA will submit a Bill for Collection following completion of the Task II soil excavation work at the nine properties on Water Street. Payment will be due 30 days after the submission of the Bill for Collection.	\$89,720 (40% of the estimated cost of the State's 10% share of the Task II Contract amount)
USEPA will submit a Bill for Collection following the completion of the final inspection associated with Task II. Payment will be due 30 days after the submission of the Bill for Collection.	Remainder of actual State 10% cost share for the actual Task II Contract amount.

5. The State represents and, based on that representation, USEPA understands that the State's ability to pay the amounts required by Paragraphs E.1. through E.4. , above, in a given year is dependent upon the availability of funds appropriated by the State legislature. NYSDEC agrees to use its best efforts to obtain sufficient appropriations from the State legislature in a timely manner to enable it to meet its payment obligations fully and in a timely manner, as set forth above. If, despite the use of such best efforts, the State is unable to timely make all or part of any payment required above as a result of insufficient appropriations from the State legislature, the State shall notify USEPA of that fact as soon as practicable, but no later than the due date for the given payment. Such notification shall indicate why the State is unable to make the payment and shall estimate when the State believes it will be able to make the payment. Notwithstanding such notification, NYSDEC shall use its best efforts to obtain the needed appropriations at the earliest possible date. If, by the date of completion of Task II of the SOW, any portion of the total amount owed by the State under Paragraphs E.1. through E.4., above, (or such other amount as may be required by an Amendment to this Contract) has not been paid to USEPA, the State shall have the burden of demonstrating that it was impossible for it to pay said portion because of an absence of sufficient appropriations from the State legislature. Notwithstanding such a showing, the State will continue to be responsible for paying 10% of the total cost of Tasks I and II of the SOW. Nothing contained in this Contract shall be interpreted as a commitment by the State to appropriate, obligate, or pay funds in contravention of State law.

6. As soon as practicable after the date USEPA makes its final payments for the work described as Tasks I and II in the SOW, USEPA shall calculate the final cost of each Task. USEPA shall give the State Project Officer written notice of the final cost of each Task promptly after calculating the respective cost amounts and simultaneously shall, to the extent allowed by law, give the State Project Officer copies of the invoices or other documents supporting each cost. If any final cost amount is less than the cost estimate for the respective Task, as set forth in the SOW (or in any Amendment to this Contract), and State overpayment or overmatch has occurred, that overmatch may be applied toward the State's statutory contribution of 10% of the final cost for any subsequent work at the Site. The State may direct USEPA to return the overmatch or to use the excess cost share payment to meet the cost share obligation at another site. The calculation of the final cost of any subsequent work, as well as notification of the State Project Officer and the provision of cost documentation to the State, will be performed in the same manner as set forth in this Paragraph. In the event that the amount of money contributed by the State through this Contract exceeds the State's statutorily required share of the total cost of Task I and Task II, as set forth in the SOW, and as determined by future fiscal review, and the State directs USEPA to return the overmatch, USEPA agrees to reimburse any overmatch to the State within ninety (90) days of State application to receive reimbursement for these excess funds. If additional funds are required to meet the State's statutorily required share of the total costs, the State agrees to pay USEPA the additional funds within ninety (90) days of USEPA's written notification to the State Project Officer.

7. If, in any given federal fiscal year, USEPA is unable to perform the work, as described in Task I or Task II of the SOW because of insufficient federal funds, USEPA will so notify the State. In that event, the State need not make any payment that would otherwise be due that year, pursuant to Paragraphs E.2.or E.4, above, as appropriate. USEPA will thereafter notify the State if/when USEPA resumes performing the Task, and the State shall then resume making any required payments under Paragraphs E.2 or E.4, above, as appropriate. Notwithstanding anything in this Paragraph E.7, the State shall be responsible for paying 10% of the total cost paid by USEPA for each Task.
8. State costs for personnel, materials, services, facilities, and the performance of those things necessary for or incidental to its obligations under this Contract shall not be applied toward the State's ultimate cost share at the Site, except the cost of acquiring any real property as described in Paragraph L. of this Contract. Support agency assistance costs will be provided, upon application by the State, under a separate cooperative agreement.
9. Upon request by the State, and for the purpose of allowing the State to carry out a fiscal review, USEPA shall provide the State, to the extent allowed by law, copies of all documents in USEPA's possession containing financial data pertaining to work performed by USEPA's contractors related to the Tasks identified in the SOW. Any changes in the State's cost share resulting from such fiscal review will be subject to the provisions of Paragraph E.6., above, relating to final cost adjustments.

10. Expenditure by USEPA of funds contributed by the State does not ensure that USEPA will provide additional money for remedial action at the Site.

11. State payments will be made in the following manner: the USEPA Project Officer will submit to the State Project Officer a request for payment of the required amount on a State Standard Voucher and USEPA Bill for Collection at the appropriate time as specified above in Paragraphs E.2 and E.4. Instruments of payment shall be made payable to the USEPA Hazardous Substances Superfund and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

F. Duration

This Contract shall become effective upon execution by both Parties and approval for the State by the New York State Office of the State Comptroller. This Contract shall remain in effect until the financial settlement of project costs and final reconciliation of response costs (including change orders, claims, overmatch of cost share, reimbursements, etc.) ensures that both USEPA and the State have satisfied their respective cost share requirements for all Tasks.

G. Joint Inspection of the Remedy

1. Inspections will be conducted at the contaminated residential properties on Water Street and at the former Flintkote Plant building at 300 Mill Street in Lockport, New York, once they are fully remediated as described in Tasks I and II. The inspections will be led by the RPM. The SPM or other State designee shall accompany the RPM during the inspections.
2. The inspections will consist of a walk-through inspection of the project areas, focusing on any outstanding construction items identified in a pre-final inspection which shall be conducted to verify whether Task I and II activities were conducted in accordance with the remedial design. The RPM and the SPM will confirm that all outstanding items have been resolved. If any items are still unresolved, the inspections shall be considered pre-final, requiring another inspection (s).
3. Following the satisfactory completion of the Tasks I and II inspections described in Paragraph G.2., above, USEPA will provide to the State a copy of the remedial action report for Tasks I and II.
4. The Task I and II remedial action report(s) referred to in Paragraph G.3., above, will be reviewed by USEPA and the State. The SPM will provide to the RPM the State's written acceptance of the Task I and II remedial action report(s).

5. USEPA, in consultation with the State, will determine that Fund-financed response actions described in the SOW have been completed. Enforcement actions and other necessary activities may proceed independently of project closeout.

H. State Review

1. USEPA and the State shall specify a binding time frame for review and comments on matters relating to the implementation of the response action pursuant to this Contract.
2. If a Superfund Memorandum of Agreement is executed between the Parties, the consultation requirements therein shall be incorporated into this Contract by reference.

I. Off-Site Storage, Destruction, Treatment, or Disposition

1. At the present time, the Parties anticipate the need for off-Site storage, destruction, treatment, or disposition of hazardous wastes in connection with the implementation of the remedial action. The State, pursuant to Section 104(c)(3)(B) of CERCLA, shall assure the availability of a hazardous waste disposal facility which has adequate capacity for off-Site storage, destruction, treatment, or disposition. The costs of such off-Site storage, destruction, treatment, or disposition will be included in the total cost of Tasks 1 and II and will be paid for as provided in Paragraph E.
2. The State submitted its Waste Capacity Assurance Plan to USEPA on October 16, 1989, and provided satisfactory further submissions to USEPA in accordance with USEPA's conditional approval of that plan. To date, the State's waste capacity

assurance submissions have complied with Section 104(c)(9) of CERCLA, and USEPA has determined that New York continues to be eligible to receive Superfund Trust funds.

J. Permits

In accordance with Section 121(e)(1) of CERCLA, Federal, state and local permits are not required for the portion of any remedial action conducted entirely on-Site, where such remedial action is selected and carried out in compliance with Section 121 of CERCLA. However, remedial actions that involves the storage, treatment, or disposal of hazardous substances at off-Site facilities shall involve only such off-Site facilities that are operating under appropriate Federal and state permits or authorization and other legal requirements, and which otherwise meet the requirements of Section 121(d)(3) of CERCLA. As requested by USEPA, the State also shall obtain or assist USEPA in obtaining any permits or permit equivalents that are necessary to complete the activities described in the SOW.

K. Site Access

USEPA may attempt to secure access to the Site for itself, its agents, representatives, and contractors performing Tasks I and II as described in the SOW. The State, however, shall assist USEPA, as requested, and shall retain to the extent of its legal authority the responsibility for obtaining access to the Site.

L. Acquisition of Interests in Real Property

1. Pursuant to Section 104(j) of CERCLA, the State agrees to acquire or otherwise accept transfer of any interests in real property located at the Site that USEPA deems necessary for the performance of the remedial action at the Site, to the extent that such interests are not acquired by potentially responsible parties. The cost, if any, of acquiring any such interest in real property shall be credited toward the State's statutorily required contribution for any remedial activities authorized for the Site, provided that if the amount of money contributed by the State pursuant to this Contract, including the cost of acquiring an interest in real property, exceeds the State's statutorily required share of the costs of remedial activities authorized for the Site, such overpayments shall be addressed as specified in Paragraph E.6., above.
2. The State shall not acquire any interest in real property without the written concurrence of the USEPA Project Officer. The State shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and its implementing regulations set forth at 49 C.F.R. Part 24, in acquiring any interests in real property.

M. Information Regarding the Site

1. At USEPA's request, and to the extent allowed by State law, the State shall make available to USEPA any information in its possession concerning the Site, with the exception of deliberative and other privileged documents which the State would not otherwise be required to disclose. At the State's request, and to the extent allowed by

Federal law, USEPA shall make available to the State any information in its possession concerning the Site, with the exception of deliberative and other privileged documents which USEPA would not otherwise be required to disclose. (Also, see Paragraph M.2., below, with respect to confidential documents.)

2. If any information is provided to USEPA by the State under a claim of confidentiality, it will be treated in accordance with 40 C.F.R. Part 2 if the State has given USEPA notice of the claim of confidentiality. USEPA will not disclose information submitted under a claim of confidentiality unless USEPA is required to do so by Federal law or has made a determination that the public interest would be served by disclosure to the public and has given the State ten (10) working days advance notice of USEPA's intent to release that information. Absent notice of such claim of confidentiality, USEPA may make said information available to the public without further notice, subject only to the limitation in Paragraph M.4, below.

3. If any information is provided to the State by USEPA under a claim of confidentiality, it shall be treated in accordance with state law if USEPA has given the State notice of the claim of confidentiality. The State shall not disclose information submitted under a claim of confidentiality unless the State is required to do so by state law and has given USEPA ten (10) working days advance notice of the State's intent to release that information. Absent notice of such claim of confidentiality, the State may make said information available to the public without further notice, subject only to the limitation in Paragraph M.4., below.

4. Unless otherwise required by applicable law (*i.e.*, Agency discretion is not permitted), any information whose release may potentially harm present or planned enforcement actions or investigations shall not be released to the public unless such release is approved by both the USEPA Region II Office of Regional Counsel and the New York State Department of Environmental Conservation Office of General Counsel, with the concurrence of the New York State Department of Law.

N. Failure to Comply with Terms of Contract

1. If the State fails to comply with the terms of the Contract, USEPA may proceed under the provisions of Section 104(d)(2) of CERCLA, which provides that USEPA must provide the State with sixty (60) days notice before commencing any action to enforce this Contract or to recover any funds advanced or any costs incurred because of the breach of this Contract by the State.
2. If USEPA fails to comply with the terms of this Contract, no action for damages or any other form of remedy shall be commenced until the State has given USEPA sixty (60) days written notice of intent to file suit.

O. Amendments

The USEPA Project Officer, the USEPA Director of the Emergency and Remedial Response Division or his designee, and the State Project Officer or his designee have the authority to make joint decisions regarding the subject matter of this Contract, which

shall be agreed to in writing, where such decisions do not alter the scope or cost of response actions taken pursuant to this Contract.

Any change of circumstance that alters the scope or cost of response actions, or which impacts the State's assurances pursuant to the NCP and CERCLA, will require a Contract amendment, which will become effective upon execution by both Parties and approval for the State by the New York State Office of the State Comptroller.

P. Community Relations Plan

Pursuant to 40 C.F.R. §300.155, USEPA will revise, in cooperation with the State, the Community Relations Plan, as necessary, which is being developed, and USEPA will implement that plan.

Q. Third Parties

1. This Contract is intended to benefit only the State and USEPA. It extends no benefits or rights to any third party.
2. Neither USEPA nor the State assumes any liability to third parties with respect to losses as a result of bodily injury or property damages resulting in any way from work performed in connection with the remedial actions undertaken pursuant to this Contract, nor does either Party waive any rights or immunities provided by law.

3. The execution of this Contract does not constitute a waiver of USEPA's right to bring an action against any person or persons for liability under CERCLA or any other provision of law.

4. The execution of this Contract does not constitute a waiver of the State's right to bring an action against any person or persons for liability under any applicable state or Federal law.

R. Disclaimer of Agency Relationship

Nothing contained in this Contract creates, either expressly or by implication, the relationship of agency between USEPA and the State. USEPA (including its employees and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Contract, and the State (including its employees and contractors) is not authorized to represent or act on behalf of USEPA in any matter relating to the subject matter of this Contract.

S. Enforcement and Cost Recovery

1. USEPA may bring an action against any party under Section 106 of CERCLA to compel cleanup, and USEPA and the State may each bring an action against any party for cost recovery under Section 107 of CERCLA.

2. Notice of Intent to Settle or to Initiate Proceedings

USEPA and the State agree that, with respect to the claims which each may be entitled to assert against any third person (herein referred to as the responsible party, whether one or more) for reimbursement of costs expended by USEPA or the State for the response actions at the Site as described in this Contract, neither USEPA nor the State will enter into a settlement with or initiate a judicial or administrative proceeding against a responsible party except after having given notice in writing to the other Party to this Contract not less than twenty (20) days in advance of the date of the commencement of the proposed judicial or administrative proceeding, except where, under the circumstances, it is not feasible for such advance notice to be given by USEPA or the State (in which case USEPA or the State shall provide the other with such notice as is feasible). Neither Party to this Contract shall attempt to negotiate on behalf of the other Party, and authority to do so is hereby expressly negated and denied.

3. Cooperation and Coordination of Cost Recovery Efforts

USEPA and the State agree that they will cooperate and coordinate in efforts to recover their respective costs of response actions taken at the Site as described herein. USEPA and the State agree that each will notify the other Party of the negotiation of any settlement and the filing and management of any judicial actions against a potentially responsible party. This shall include coordination in the use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, subject to the provisions of this Paragraph S., above.

4. Judicial Action

- a) USEPA and the State agree that any judicial action taken by USEPA against a potentially responsible party pursuant to CERCLA for recovery of any sums expended in performing response actions at the Site described herein shall be filed in the United States District Court for the judicial district in which the Site is located, or in such other judicial district of the United States as may be authorized by Section 113 of CERCLA.

- b) USEPA and the State agree that any judicial action taken by the State against a potentially responsible party pursuant to the New York State Environmental Conservation Law, the New York State Finance Law, or New York State Common Law, for recovery of any sums expended in performing the response actions at the Site described herein shall be filed either in the United States District Court for the judicial district in which the Site is located, or in such other judicial district of the United States as may be authorized by Section 113 of CERCLA, or in the appropriate New York State Court.

5. Assumption of Work by Responsible Party

If any responsible party notifies USEPA in a timely manner of its willingness to perform properly and expeditiously all or part of the remedial action required under this Contract, USEPA shall promptly notify the State in writing. USEPA will submit to the State for review and comment a detailed proposal of a remedial action or


detailed plans and specifications identifying the work to be performed by the responsible party. If a responsible party takes over any activities at the Site, this Contract will be modified or terminated, as appropriate.

T. Executory Clause

Nothing herein shall constitute or be deemed to constitute an obligation of future appropriations by the legislature of the State.

In witness whereof, the Parties hereto have executed this Contract for remedial action at the Eighteen Mile Creek Superfund site in three (3) copies, each of which shall be deemed an original.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

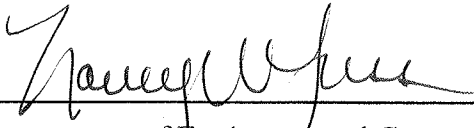

for _____
Walter E. Mugdan, Director
Emergency and Remedial Response Division
USEPA Region II

2/28/14
Date

FOR THE STATE OF NEW YORK

By signing below, the State hereby certifies that this Contract is in accordance with New York State Department of Environmental Conservation guidelines.

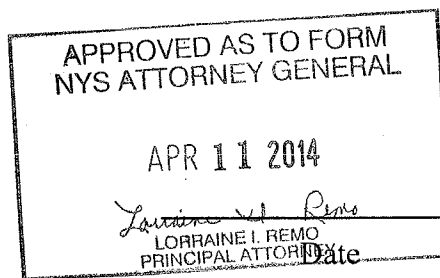
Recommended by:



Department of Environmental Conservation

APR 01 2014
Date

Approved (by) as to Form:

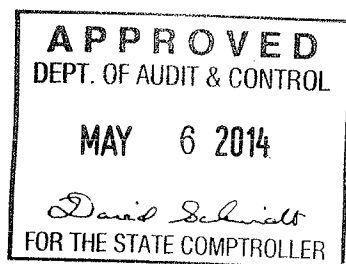


Department of Law

Approved by:

Office of the State Comptroller

Date



APPENDIX A SITE DESCRIPTION

EIGHTEEN MILE CREEK SITE NIAGARA COUNTY, NEW YORK

Site Description

The Eighteen Mile Creek Site is located in Niagara County, New York and includes contaminated sediments, soil and groundwater in and around Eighteen Mile Creek.

The headwaters of the Eighteen Creek consist of an East and West Branch which begin immediately north of the New York State Barge Canal (Canal) in Lockport, New York. Water from the Creek's East Branch originates at the spillway on the south side of the Canal, where it is directed northward underneath the Canal and the Mill Street Bridge through a culvert. Water from the West Branch originates from the dry dock on the north side of the Barge Canal and then flows northward. The East and West Branches converge just south of Clinton Street in Lockport. In Lockport, the Creek Corridor is bordered by residential properties along Water Street and vacant land to the west, Upson Park to the south, Mill Street to the east, and the former Flintkote Plant property to the north. The topography of the area consists of a steep downward slope through the Niagara Escarpment formation which the Creek transects. The Creek and millrace bisect the former Flintkote Plant property. The stretch of the Creek along the Corridor is approximately 4,000 feet in length. The Creek flows north for approximately 15 miles and discharges to Lake Ontario in Olcott, New York.

EPA's selected remedial response action for the Site will address soil contamination at nine residential properties which encompass an area of approximately 2.25 acres along Water Street (Residential Properties) and will include demolition of a dilapidated building at the former Flintkote Plant property at 300 Mill Street in Lockport. The Residential Properties are adjacent to the Creek and experience flooding during high water events. Severe flooding of up to 100 feet from the Creek bank reportedly occurs approximately once every two years, with lesser flooding occurring several times a year as a result of heavy precipitation and blockage of culverts through which the Creek flows under William Street. The former Flintkote Plant property is located northeast of the Water Street properties. Demolition of the building at 300 Mill Street is necessary to sample under the building to complete characterization of the former Flintkote property.

Site History

The Eighteen Mile Creek Corridor has a long history of industrial use dating back to the 19th century when it was used as a source of power. Past sampling indicates the presence of numerous contaminants in Creek sediments, including polychlorinated biphenyls (PCBs), lead, copper, pesticides/insecticides, dioxins, and furans. Possible sources of this contamination may include releases from hazardous waste sites or contaminated properties, industrial or municipal wastewater discharges, and storm water and combined sewer overflow discharges.

The Flintkote Building

The former Flintkote Company began operations as a manufacturer of felt and felt products in 1928, when the property was purchased from the Beckman Dawson Roofing Company. In 1935, Flintkote began production of sound-deadening and tufting felt for installation in automobiles. Manufacturing of this product line continued until December 1971, when operations ceased and the plant closed. The disposal history at the former Flintkote Plant property is largely unknown, although aerial photographs suggest that by 1938 fill was disposed in the section of 300 Mill Street between the Creek and the millrace in an area known as the island. It has also been reported that ash resulting from the burning of municipal garbage was dumped at the former Flintkote Plant property.

In 2002, the building at 300 Mill Street was the subject of an EPA removal action. This action focused on the removal of friable asbestos containing materials within the 300 Mill Street building and debris on the property. The action resulted in the off-site disposal of 170 cubic yards of asbestos-containing debris. Asbestos-containing material remains in the building; however, most of it is in non-friable form.

The majority of the buildings on the 198 Mill Street portion of the former Flintkote Plant property have been razed, though former basement walls, concrete columns, and concrete floors remain. The building that remains on the 300 Mill Street parcel is constructed of stone, brick, and concrete with wooden or concrete roof deck structures. The structure is severely deteriorated, with the majority of the building having some structural deficiencies. There are numerous openings in the floors. The roof systems are partially or completely collapsed and the stairways and hand rails are in poor condition. Currently, the property is secured by a fence that is maintained by Niagara County.

In 1999, NYSDEC conducted an investigation of the Flintkote Plant property. The results of the investigation are presented in a September 2000 report entitled "*Site Investigation Report, Former Flintkote Plant Site.*" The investigation revealed that the former Flintkote Plant property received various wastes, refuse, and debris over the years. Much of the waste material was visible at the surface and along the embankments of the Creek, which runs through the Flintkote property, and the millrace. The subsurface investigation revealed that most of the waste material at the former Flintkote Plant property is ash containing glass, coal, coke, slag, ceramic, bottles, brick, buttons, and wood.

In 2003, Niagara County, under the NYSDEC's Environmental Restoration Program, conducted an additional investigation at the Flintkote Plant property. Soil, fill, groundwater, surface water, sediment, and waste samples were collected from the property to characterize the nature and extent of contamination. The sampling revealed the presence of approximately 46,500 cubic yards of ash fill and elevated concentrations of PCBs, metals, and semi-volatile organic compounds (SVOCs) in the soil and sediment. The field activities and findings of both the 1999 and 2003 investigations are described in Niagara County's July 2005 "*Site Investigation Report.*" These investigations, however, did not characterize the soil beneath the building located at the 300 Mill Street land parcel because the building is unsafe for personnel to enter and too

confining to employ drilling equipment. In March 2006, NYSDEC selected a remedy, which was not implemented, to address contamination at the former Flintkote Plant property.

Residential Properties on Water Street

In April 2002, the Niagara County Health Department (NCHD) received a request from a Water Street property owner to evaluate soils on their residential property. The property owner was concerned that elevated PCB concentrations in Creek sediment had the potential to impact their property during flooding events. NCHD conducted an initial inspection of the property owner's yard, and NYSDEC subsequently collected three surface soil samples from the property on April 16, 2002. The results of the sampling analysis revealed that elevated concentrations of PCB and lead were present.

In July 2002, NYSDEC conducted three separate sampling events of the Creek and properties along Water Street to determine if the Residential Properties were impacted by the former Flintkote Plant and/or the Creek. Surface soil and sediment samples collected from the Water Street properties, the Creek, and the wooded property south of the former Flintkote Plant were analyzed for PCBs and/or lead. The results of these sampling events are presented in a NYSDEC publication entitled "*Sampling Report, Water Street Properties, City of Lockport, Niagara County, New York*" dated March 2003.

In addition, NYSDEC collected eighteen subsurface fill samples for its remedial investigation to characterize the fill material observed on the Properties. Many of these samples were of fill material containing ash, slag, cinders, coal, brick, and/or glass. The field activities and sampling results are presented in a NYSDEC publication entitled "*Remedial Investigation Report*" dated September 2006.

The results of NYSDEC's investigations indicate that the Residential Properties are contaminated by fill material containing PCBs and metals. These properties may also be further contaminated by periodic flooding of the Creek, as contaminated sediment may be deposited on these properties during flood events. In addition, erosion of soil from these properties may be contributing to the contamination of the Creek. In March 2010, following NYSDEC's feasibility study of the Creek Corridor, NYSDEC selected a remedy under state law to address areas of contamination in the Corridor. That state remedy also has not been implemented.

EPA Activities at the Flintkote Building and the Residential Properties

In 2011, NYSDEC requested that EPA consider the Site for inclusion on the NPL and in March 2012, EPA included the Eighteen Mile Creek Site on the NPL.

In March 2013, EPA expanded the residential soil sampling program to supplement the investigations performed by NYSDEC and collected an additional nine surface soil samples primarily in the public right-of-ways along Mill Street and Jackson Avenue. Four soil samples were collected along the western side of Water Street, which were in the backyard of some Jackson Street properties. Analytical results of these four samples did not reveal elevated values of PCBs and/or metals indicative of Site-related impacts. Five soil samples also were collected

near the public right-of-way on residential properties on Mill Street. Analytical results of the five soil samples did not reveal elevated levels of PCBs. However, lead was detected in all five soil samples, and two out of the five soil samples revealed elevated levels of lead ranging from 420 to 470 ppm. In June 2013, EPA conducted additional sampling at the two properties with elevated lead to evaluate whether the concentrations are representative of the lead concentrations in soil at these properties.

In November 2012, EPA collected additional samples from the former Flintkote building for waste characterization purposes. The results of 28 samples collected for asbestos analysis confirmed the presence of asbestos-containing material in pipe insulation, window glazing, and the roof. Samples were also collected from the walls and sediment inside the building, which revealed elevated levels of polycyclic aromatic hydrocarbons (PAHs), pesticides, and lead. Lead was detected at a maximum concentration of 2,300 ppm from a concrete column in the basement.

Based on the NYSDEC 2010 remedy and EPA's additional sampling around the properties in March 2013 and June 2013, USEPA issued a Proposed Plan on July 26, 2013, which identified a preferred alternative for remediating the residential properties and demolishing the former Flintkote building at 300 Mill Street. The comment period for the Proposed Plan closed on August 26, 2013. USEPA did not receive any significant adverse comments on the preferred alternative. The preferred alternative for the Site includes the major components which are detailed below:

- Acquisition of six privately-owned properties on Water Street in Lockport, NY, permanent relocation of property owners/tenants who reside at the five houses on these properties, and demolition of the houses;
- Excavation of lead and PCB contaminated soil which exceed site-specific remediation goals from the nine residential properties, off-site disposal of that contaminated soil, and the use of clean soil to backfill the excavated areas; and
- Demolition of a contaminated, dilapidated building at the former Flintkote Plant, located at 300 Mill Street in Lockport, NY.

On September 30, 2013, the USEPA issued a Record of Decision for the Site which maintained the Proposed Plan's preferred alternative as the remedy.

APPENDIX B
STATEMENT OF WORK
EIGHTEEN MILE CREEK SITE
NIAGARA COUNTY, NEW YORK

Required Tasks:

- I. Task I will include acquisition of six of nine residential properties on Water Street in Lockport, NY, relocation of the residents who reside in five houses on the six properties, and demolition of the houses and demolition of the former Flintkote Building at 300 Mill Street, as outlined in the September 2013 Record of Decision (ROD). Task I will be implemented upon execution of this SSC. Demolition of the homes and the former Flintkote building will be performed once residents have been relocated. Upon completion of the demolition work, a security fence will be erected around the perimeter of the six properties.

Task I Budget Estimated Cost	
Estimated costs for acquisition of the properties at 99, 113, 117, 125, 127, and 143 Water Street; relocation of the residents and demolition of the homes at 99, 113, 117, 127 and 143 Water Street; installation of security fencing around all of the acquired properties; and demolition of the former Flintkote building at 300 Mill Street.	\$1,700,000
Estimated State Share:	\$170,000

- II. Task II will include excavation of soil which exceeds the RAOs for PCBs and lead at the nine properties on Water Street as outlined in the September 2013 ROD. Task II will be performed at the completion of the remedial action selected for the Creek Corridor which extends from the New York State Canal to Harwood Road in Lockport, NY.

Task II Budget Estimated Cost	
Estimated costs for excavation and off- site disposal of contaminated soils at 97, 99, 105, 113, 117, 125, 127, 131, and 143 Water Street which are above the remediation goals set forth in EPA's OU1 ROD for the Site.	\$2,243,000
Estimated State Share	\$224,300

APPENDIX C

CERTIFICATION LETTER FROM THE NEW YORK STATE ATTORNEY GENERAL



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, NY 12224

ROBERT ABRAMS
Attorney General

JAMES A. SEVINSKY
Assistant Attorney General in Charge
Environmental Protection Bureau

VAL E. WASHINGTON
Deputy Bureau Chief
Environmental Protection Bureau

January 14, 1988

Ms. Helen S. Beggun
Chief, Grants Administration
Branch
United States Environmental
Protection Agency
Region II
26 Federal Plaza
New York, New York 10278

Re: New York's authority to enter into contracts
and cooperative agreements with USEPA

Dear Ms. Beggun:

In an effort to expedite the award of Cooperative Agreements and execution of Superfund State Contracts, the New York State Department of Law ("NYDOL"), at the request of the New York State Department of Environmental Conservation ("NYSDEC"), submits herewith a generic assurance letter. This letter is submitted in satisfaction of § 104(c)(3) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), codified at 42 U.S.C. 9601, et seq. The NYSDOL has determined that the NYSDEC has the authority to make the assurances required on behalf of New York State and also has the authority to undertake activities performed under Cooperative Agreements and Superfund State Contracts. This generic assurance letter applies to the State participation in the remediation of all National Priorities List sites in New York State and is in accordance with the USEPA's guidance document entitled "State Participation in the Superfund Program".

CERCLA 104(c)(3) requires that NYSDEC provide to USEPA assurances pertaining to future maintenance related to federally funded cleanups, the availability of an acceptable hazardous waste disposal facility, and the payment of a portion of the costs of remedial actions.

CERCLA 104(c)(3)(A) obligates the State to assure all future maintenance of the removal and remedial actions provided for the expected life of such actions, as determined by the USEPA. CERCLA 104(c)(3)(C) requires the State to pay, or assure payment of, 10% of the cost of federally funded remedial actions (50% or more at sites operated by the State or a political subdivision). The Hazardous Waste Remedial Fund ("Fund"), created pursuant to Section 97-b of the State Finance Law, makes monies available to NYSDEC for, inter alia, post-closure operation and maintenance costs and for financing the non-federal share of the cost of cleanup and site remediation activities. See, 97-b(3)(d). NYSDEC is thus empowered to use Fund monies to meet its obligations under CERCLA 104(c)(3)(A) and (C).

NYSDEC's capacity to make the assurance regarding adequate disposal set forth in CERCLA 104(c)(3)(B) is an incident to its general powers to protect the environment, which are described more fully below. Further, legislation enacted in 1987 will ensure continued State eligibility for federal funds. Section 104(c)(9)(A) of SARA, 42 U.S.C. 104(c)(9)(A) states that, as of November, 1989 (three years after SARA's effective date), EPA shall not provide any remedial actions in New York unless the State assures the availability of treatment or disposal facilities to manage the hazardous wastes it expects to generate over the next twenty years. The 1987 legislation (Ch. 618, 1. 1987) requires DEC to establish a statewide hazardous waste facility siting plan, which is designed to, inter alia, ensure comprehensive statewide planning to meet the hazardous waste management requirements contained in SARA.

In addition to the requisite CERCLA assurances, it is equally clear that NYSDEC has the authority to carry out terms of Cooperative Agreements and Superfund State Contracts. The New York Environmental Conservation Law ("ECL") grants the NYSDEC Commissioner extremely broad powers towards the protection of the environment. Article 3, Title 3 of the ECL, "General functions, powers and duties of the department [NYSDEC] and the commissioner," reads, in pertinent part, as follows:

1. It shall be the responsibility of the department, in accordance with such existing provisions and limitations as may be elsewhere set forth in law, by and through the commissioner to carry out the environmental policy of the state In so doing, the commissioner shall have the power to:

- a. Coordinate and develop policies, planning and programs related to the environment of the state and regions thereof;

- i. Provide for prevention and abatement of all water, land and air pollution . . . ;

.
n. Promote restoration and reclamation
of degraded or despoiled areas and natural
resources;

.
w. Cooperate with the executive,
legislative and planning authorities of the
United States . . . in furtherance of the
[environmental] policy of this state . . . ;

2. To further assist in carrying out
the [environmental] policy of this state
. . . the department, by and through its
commissioner, shall be authorized to:

.
b. Enter into contracts with any person
to do all things necessary or convenient to
carry out the functions, powers and duties of
the department.

.
d. Consult and cooperate with:

.
(3) Officials and representatives
of the federal government, of other
states and of interstate agencies on
problems affecting the environment of
this state;

f. Undertake any studies, inquiries,
surveys or analyses it may deem relevant
through the personnel of the department or in
cooperation with any public or private
agencies . . . for the accomplishment of the
purposes of the department.

j. Act as the official agency of the
state in all matters affecting the purposes
of the department under any federal laws now
or hereafter to be enacted.

.
1. Formulate and execute contracts
. . . according to the statutes or department
orders and regulations in such cases made and
provided. . . .

In addition to these general powers, NYSDEC has specific jurisdiction over waste storage, transportation and disposal (Article 27 of the ECL). The ECL was amended in 1978 to add specific powers relating to the management of hazardous waste (Title 9, Article 27) and siting of hazardous waste facilities (Title 11, Article 27); and again in 1979 to add powers in regard to inactive hazardous waste disposal sites (Title 13, Article 27). It is clear that the New York Legislature intends that authority in this area rest with NYSDEC.

In sum, NYSDEC has the authority to provide the assurances required and the services contemplated by Cooperative Agreements and Superfund State Contracts associated with the remediation of inactive hazardous waste sites in New York State. Please feel free to contact me if you require further clarification or information regarding the above certification.

Sincerely,

ROBERT ABRAMS
Attorney General

BY:

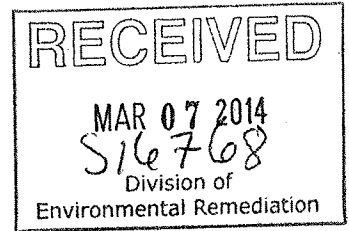
DAVID A. MUNRO
Assistant Attorney General
Environmental Protection
Bureau
(518) 474-8481

cc: Michael O'Toole
Deborah Christian, Esq.



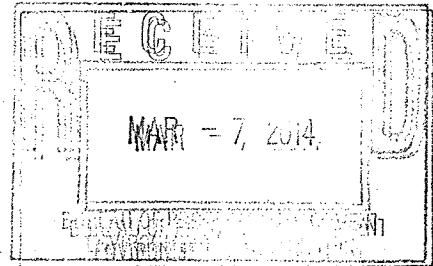
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866



FEB 28 2014

Robert Schick, P.E., Director
Division of Environmental Remediation
New York State Department of
Environmental Conservation
625 Broadway
Albany, New York 12233



Dear Mr. Schick:

Enclosed please find the Superfund State Contract ("SSC") to be executed between the United States Environmental Protection Agency ("EPA") and the State of New York ("the State") for the Eighteen Mile Creek Superfund Site ("Site") in Niagara County, New York. This document has been developed through the cooperative effort of the appropriate members of our respective staffs.

As you know, SSCs provide primary state assurances required by the Comprehensive Environmental Compensation and Liability Act ("CERCLA" or "Superfund"), 42 U.S.C. §§ 9601-9675, concerning several matters such as a state's share of remedial action costs at a Superfund site and the provision of off-site disposal facilities, if needed. Such documents also provide language to govern other aspects of the Superfund program that are anticipated to involve some degree of State/EPA cooperation and communication.

The enclosed SSC for operable unit 1 ("OU1") of the Site separates the remedial action activities selected in the EPA's Record of Decision for OU1 into two separate tasks. The first task ("Task I") includes the acquisition of six of nine residential properties on Water Street in Lockport, New York, the relocation of the residents who live at these properties, and demolition of the five homes on these properties. Task I also includes demolition of the former Flintkote Building, which is located on Mill Street in Lockport. As stated in the SSC, EPA estimates that Task I will cost approximately \$1,700,000 to implement, of which the State must contribute 10% (\$170,000) pursuant to Section 104(c) (3) of CERCLA, 42 U.S.C. § 9604(c) (3).

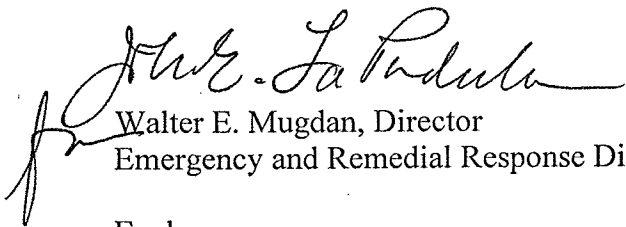
The second task ("Task II") involves the excavation of contaminated soil at all nine residential properties. Because the Water Street properties are periodically flooded and receive contaminated sediment from the Eighteen Mile Creek, Task II will not be performed until EPA's second operable unit for the Site, which will address the creek sediments, is implemented. As stated in the SSC, EPA estimates that Task II will cost approximately \$2,243,000 to implement and, thus, the State's 10% share will be approximately \$224,300.

Under this SSC, the State's total cost share is \$394,300.

Your office has requested that, for purposes of contract management, EPA provide an estimate of the contract start and completion dates. The start date for this contract will be its execution by both parties and approval for the State by the New York State Office of the State Comptroller. We estimate that the start date will be April 30, 2014. We estimate that the remedial actions covered by this contract will be completed by September 2021. However, this estimated date of contract completion is not the actual date of contract completion because, as stated in Section F of the SSC, "Duration," the SSC shall remain in effect until the financial settlement of the cost of this project and final reconciliation of response costs have been completed. In addition, the SSC may be amended if the parties agree to undertake additional remedial actions beyond the Task I and Task II actions. EPA also expects to maintain the acquired properties until the remediation for Tasks I and II are both completed, which is currently estimated to be in September 2021. Any maintenance of the properties which proves necessary after that date is not covered by the enclosed SSC and would need to be the subject of further discussions between EPA and the State.

I believe that you will find the SSC to be consistent with the discussions of our respective staffs. Three copies of the SSC are enclosed for your signature. Each copy shall be deemed an original, and each signatory should retain one copy. Please forward one copy of the executed SSC to Doug Garbarini for our records.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Walter E. Mugdan".

Walter E. Mugdan, Director
Emergency and Remedial Response Division

Enclosures

cc: G. Sutton, NYSDEC- Region 9